The Solicitors' Journal

Vol. 95 January 6, 1951 No. 1

CURRENT TOPICS

The New Year Honours

AMONG the New Year Honours solicitors will note with particular gratification that the honour of knighthood has been conferred on Mr. L. S. HOLMES, President of The Law Society. Also among the new Knights Bachelor are Professor D. HUGHES PARRY and Mr. F. H. PEAKE, the Controller of Death Duties, Board of Inland Revenue. LORD PORTER's services as President of the International Law Association are marked by the conferment on him of the G.B.E., and a number of solicitors in the local government service have also been appointed to various grades of the Order of the British Empire. A list of the honours of legal interest appears on p. 10 of this issue.

The Bentham Committee

IT is always sad to see disappear, as one sees too often nowadays, a voluntary organisation for dispensing good works. After twenty-two years of magnificent public service, the Bentham Committee has found itself obliged to end its activities at the end of the year, owing to lack of money. In helping people to establish their rights as well as in advising people what their rights were, as the chairman of the committee said in his recent address to the London Council of Poor Man's Lawyers, the committee's task was rendered possible " by finding solicitors and barristers who were prepared to take up cases for nothing—except the satisfaction of helping the poor and uninformed." It was one of the committee's rules that no solicitor who had advised an applicant as a Poor Man's Lawyer could subsequently act for him, and those solicitors who helped in the committee's work found a reward which was neither directly nor indirectly pecuniary. On the other hand the appeal early last year, notwithstanding that it was backed by a letter signed by the Lord Chancellor, the Attorney-General, the Chairman of the Bar Council and the President of The Law Society, brought in only £200 as against an annual deficit of about £250. An appeal to the London County Council, through the Lord Chancellor's Office, for a grant of £500 only produced an offer of two rooms at a reduced rent. At the last meeting the treasurer reported that the committee was exactly £350 overdrawn at the bank. Subscribers who do not pay their subscriptions for the current year until January or February are asked to pay them for the year ending 31st March next, as there are still some cases to be wound up, and the secretary's services must be retained for the time being. The twenty-first and last annual report shows 134 proceedings successfully fought or settled, 120 applicants advised or assisted, 65 applicants referred to other organisations, 47 applications under investigation, and 94 other cases investigated, totalling 460.

Cancelled Holidays

IN our issue for 7th October we published an article discussing the possible results of the " polio " scare at the Isle of Wight, during the summer, upon holiday bookings. On 21st December His Honour Judge A. TYLOR decided the first case arising from these particular circumstances and

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the case is, we understand, regarded in the island as being a test case. The judge told the defendant, Mrs. Daisy Anne Blackman, that she had unconsciously raised a very important question. She was sued for £11 4s. damages for breach of contract by Mrs. Agnes Rose Hurman, a boarding-house keeper of St. Thomas's Street, Ryde. The defendant had booked accommodation for four adults and a child, but, apparently relying upon medical advice, her husband had written cancelling the booking and saying: "Wife taken ill with fibrositis; grandchild in weak condition, advised not to travel in view of infantile paralysis." Ordering Mrs. Blackman to pay the damages and costs at £1 a month, the judge said it would have been better if medical evidence had been brought as to the extent of the outbreak of polio, as the case might be of great public importance and there might be many others. It was, however, common knowledge that the outbreak on the island had in fact been grossly exaggerated. It would seem that the judge had it in mind that the contract might have been frustrated if medical evidence showed that the outbreak had been sufficiently serious.

Illegitimate Children Born Abroad

IN *Tetau* v. *O'Dea* (1950), 94 SOL. J. 505, the High Court decided that an affiliation order could not be made in respect of an illegitimate child born abroad to a mother then domiciled abroad. It was understood that there were several other cases similar to *Tetau's*, all of which presumably had to be dismissed or abandoned as a consequence of the High Court's decision. The Maintenance Orders Act, 1950, s. 27 (2), now purports to reverse that decision in respect of illegitimate children born in Scotland, Northern Ireland or in any other country, but the Act gives no general extension of time in favour of mothers for bringing fresh proceedings accordingly. It may be, however, that in some cases the time limit under the Bastardy Laws Amendment Act, 1872, has not yet expired and solicitors acting for any women whose claims were defeated because of *Tetau's* case may find that proceedings or fresh proceedings can still be brought (*McGregor* v. *Telford* [1915] 3 K.B. 237).

The Iron and Steel Arbitration Tribunal Rules, 1950

THE rules which have just been published governing the procedure in matters (other than Scottish) before the Arbitration Tribunal established under the Iron and Steel Act, 1949, provide for the commencement of proceedings by a simple form of originating summons in which interested respondents are to be named, for the naming of respondents by the tribunal on the application of any person interested, and for service upon respondents of copies of the originating application and, later, of a written statement of relevant facts and arguments and of respondents' answers, and, in the case of a disclaimer, of the applicant's answer. There is also provision for interlocutory applications for directions, further and better particulars, discovery, interrogatories, for leave to amend pleadings and to serve replies or rejoinders, for extension or abridgment of time, for fixing the day of the hearing, and for any other purpose. These interlocutory applications are to be heard by the clerk of the tribunal. Right of audience is given to parties (other than companies or corporate bodies), their barristers or solicitors (but not a solicitor retained as an advocate by a solicitor) and any other person allowed by leave of the tribunal to appear instead of any party. In proceedings before the clerk to the tribunal a managing clerk in the employ of a solicitor acting generally in the proceedings for any party has a right of audience. In dealing with the costs of any proceedings or of any application in any proceedings, the tribunal may (*a*) take into account any failure or refusal to consent to any proposed interlocutory direction, and to admit any document or fact specified in a notice to admit, or (*b*) direct that the costs be taxed by the clerk. The office of the tribunal is at present at Room 85, Queen Anne's Chambers, 28 Broadway, London, S.W.1.

MONEYLENDERS AND RATES OF INTEREST

THE recent case of *Grosvenor Guarantee Trust, Ltd.* v. *Colleano and Another* (1950), 94 SOL. J. 706, evolved no new principle but merely demonstrated once more the difficulty with which a moneylender is faced in making a correct charge for interest on a loan. In that case the two defendants went to the registered office of the plaintiffs and there interviewed the plaintiffs' secretary. The defendant Colleano was at that time appearing in a well-known theatrical production in London and was receiving £120 a week. The second defendant, Mr. Geiger, was a film producer; he was an American who was only in England temporarily. The plaintiffs agreed to make a loan of £700 to finance a company concerned in the production of films. The loan carried interest at the rate of 150 per cent. per annum and was repayable by weekly instalments of £40; the security was a promissory note signed jointly and severally by the two defendants. Shortly after the loan of £700 was made the defendant Geiger approached the plaintiffs' secretary for a further loan, and the plaintiffs agreed to make a further loan, on similar terms to the previous loan, of £350, likewise secured by a promissory note signed jointly and severally by the two defendants. A substantial number of instalments were paid on the loan of £700, but no interest was paid on the loan of £350. Default having been made on both loans, the plaintiffs claimed the balance owing to them under both promissory notes, and the defendant Colleano counter-claimed *inter alia* that the interest on both loans was harsh and unconscionable and that the transactions should be re-opened. Morris, J., said that the whole transaction was a curious one, and such as to suggest caution when lending money; it was curious for a prominent actor and a film producer to be borrowing a comparatively small sum from a moneylender to finance film production. Those were considerations which showed that it was reasonable to charge a high rate of interest. The whole thing was undoubtedly fraught with risk. On the other hand, the plaintiffs were relying on the ability of the defendant Colleano, rather than that of the defendant Geiger, to repay the moneys lent. The plaintiffs knew that the defendant Geiger was an American who was only here temporarily. But the defendant Colleano was a prominent actor playing in a well-known production; such an actor did not suddenly vanish from professional life. The plaintiffs were dealing with somebody with a high earning capacity who was fortunately placed. While acquitting the plaintiffs of any intention to "extort," the learned judge held that in the circumstances the plaintiffs had not satisfied him that the rate of interest charged was not excessive, but considered that a high rate was justified. Morris, J., then reduced the rate of interest on both loans from 150 to 60 per cent. per annum.

The alteration of the onus of proof effected by s. 10 (1) of the Moneylenders Act, 1927, is well known. Where the rate of interest exceeds 48 per cent. per annum then it is

presumed that the rate of interest is excessive and that the transaction is harsh and unconscionable, and the burden then lies on the moneylender to prove that the rate of interest is not excessive and that the transaction is not harsh and unconscionable. But where the rate of interest does not exceed 48 per cent. per annum, it is still the duty of the borrower to show that the interest charged on the loan is excessive and that the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief. As Greer, L.J., said in *Reading Trust, Ltd.* v. *Spero* [1930] 1 K.B. 492, at p. 509, the effect of s. 10 of the Act of 1927 is to shift the onus of proof. Subject to this the question remains the same and is to be decided on the same considerations as it was before the Act of 1927.

The rate of interest which may be properly charged depends upon the risk run by the moneylender in making the loan. From that general proposition, two questions arise, namely: (1) At what period of time is the risk to be measured? (2) What duty is there upon the moneylender to ascertain the amount of the risk? On the first question there is the authority of Channel, J., in *Carringtons* v. *Smith* [1906] 1 K.B. 79, that in considering the risk run by the moneylender it is not what the real risk is, as ascertained after the event, which has to be looked at, but how the matter would present itself to the lender at the time of the loan with the experience he certainly would have of borrowers. On the second question we have the authority of Tomlin, J., in *Garde* v. *Kerman and Others* (1925), 41 T.L.R. 597, that a moneylender cannot escape the consequences of an application for relief under the Moneylenders Act of 1900 by saying that he was unaware of facts material in determining the fair terms of the bargain if reasonable inquiry on his part would have elicited those facts.

Passing now from the general to the particular, let us examine the wide area of risk which may present itself to the moneylender in making a loan. On the one hand there is the loan made on ample security to a responsible person. At the other extreme there is the loan made on no security to a person of notorious financial instability. Between these two extremes there ranges a wide field of circumstances as affecting the question of risk. As an example of an ample security reducing the risk run by the moneylender to small—one might almost say, negligible—proportions, we may refer to *Blair* v. *Buckworth* (1908), 24 T.L.R. 474, where, the borrower being under the necessity of raising a sum of money at short notice, the moneylender took advantage of that necessity to induce the borrower to sign a promissory note payable in three months with interest at the rate of 44 per cent. per annum. The actual amount of money advanced was £7,560 and the security for the loan was an equitable mortgage of land, the equity of redemption being worth about £22,500. The Court of Appeal held that there was substantial security for the loan and reduced the rate of interest to 10 per cent. per annum for three months and 6 per cent. afterwards. Likewise there was ample security for the loan in *Verner-Jeffreys* v. *Pinto* [1929] 1 Ch. 401, where a widow in receipt of a substantial income borrowed from moneylenders the sum of £500 with interest at the rate of 48 per cent. per annum, the loan to be repaid by eleven consecutive monthly instalments of £40. The loan was amply secured on a bill of sale on the borrower's furniture and effects. The Court of Appeal (affirming Clauson, J., on this particular point) reduced the rate of interest to 15 per cent. per annum. Passing now to the other extreme set of circumstances as affecting risk, we have the case of *Parkfield Trust* (1935), *Ltd.* v. *Portman* (1937), 81 SOL. J. 687, where the amount advanced to the borrower was £600 and the rate of interest was 177.7 per cent. per annum. When the borrower went to the moneylenders he had nothing but a highly speculative reversion and the prospect of a loan from an insurance company on the guarantee of two persons. The position of the borrower was put frankly before the moneylenders. There was no thrusting of money on the borrower, no misrepresentation, and no "catching bargain." Goddard, J., gave judgment for the moneylenders. Likewise, in *Mills' Conduit Investments, Ltd.* v. *Tattersall* (1939), 56 T.L.R. 209, the sum advanced was £100 for a period of three months with interest at the rate of 120 per cent. per annum. The borrower already owed some £800 to other moneylenders and this fact was known to the plaintiffs in the present case. But apart from that matter the borrower gave no information as to what he was earning. He gave the moneylenders a post-dated cheque which was a worthless piece of paper. The borrower was perfectly willing to pay this large rate of interest. Du Parcq, L.J. (sitting as an additional judge of the King's Bench Division), said that the view taken by the Court of Appeal, in considering the Moneylenders Act, 1927, is that, when a borrower knows what he is about, when he requires money for his own purposes and has no security whatever to offer, and when there is nothing whatever to indicate that any advantage is being taken of him, then a very high rate of interest may be allowed. Accordingly, in *Mills' Conduit Investments, Ltd.* v. *Tattersall*, du Parcq, L.J., refused to reduce the rate of interest below 120 per cent. per annum.

So far then we have a rate of interest of only 6 per cent. per annum allowed where the security might be described as more than sufficient and 177 per cent. per annum allowed where there was no security and, moreover, the borrower's financial situation generally was highly precarious. But, in practice, the majority of moneylending transactions lie somewhere between those two extremes. In *Salaman* v. *Blair*; *Blair* v. *Johnstone* (1914), 111 L.T. 426, the amount of the loan was £3,000 in respect of which the borrower gave a promissory note for £3,750 payable six months after date. By way of security the borrower also gave a charge on his real estate, which was already incumbered but on which the equity of redemption was estimated to be of the value of about £100,000. The moneylenders believed that they were adequately secured at the date of the transaction and this turned out indeed to be the fact. The rate of interest on the transaction was 50 per cent. per annum. The Court of Appeal reduced it to 20 per cent. per annum. The court pointed out that an unsecured advance stands in a different position from a secured advance. In the former case 50 per cent., or even 60 per cent., may not be deemed excessive, whereas in the latter case such a rate would ordinarily be deemed excessive. In *Jennings* v. *Seeley* (1923), 40 T.L.R. 97, the amount of the loan was £300 secured by a promissory note for £500 payable by monthly instalments over two years, and a pledge of a large quantity of valuable furniture, plate and china. The rate of interest on the transaction worked out at 82½ per cent. As to the furniture and other effects the borrower alleged those to be worth £2,000. In fact she had purchased the furniture and other effects some eighteen months previously for £1,700, but the valuation of the same for the purpose of making the loan was for some £300. Eve, J., reduced the rate of interest from 82½ per cent. to 15 per cent. At the same time the learned judge pointed out that a rate of interest of 82½ per cent. per annum might not be excessive where there was no security. At this point it is well to pause and consider the word "security." There is, of course, security as evidenced by a promissory note, but this is merely

personal security and not the same thing as some tangible security in the form of a bill of sale or a charge on real property. When we speak of "security" in moneylending transactions we have generally in mind some real or tangible security as distinct from, or in addition to, a mere personal promise to repay. In addition to the question of "security" there are of course many other matters which may have to be considered, namely, questions of misrepresentation, fraud, thrusting money upon the borrower, exercising pressure upon the borrower, the inequality in the education, intelligence and status of the parties to the transaction. Assuming, however, that the borrower is intelligent and understands what he is doing, the risk to the moneylender can be fairly gauged by the nature of the security which he is being offered for the loan. An examination of numerous decisions—important though they admittedly are—will not elucidate the position much further. It is therefore submitted that the following propositions are a general guide in dealing with this problem :—

(i) Where the amount of the loan is amply secured by other than mere personal security, as, for example, by a bill of sale on furniture which more than covers the amount of the advance, then the moneylender should be careful not to charge more than 20 per cent. per annum.

(ii) Where the amount of the loan is only partly secured by some tangible security, e.g., the bill of sale on the borrower's furniture only partly covers the amount of the advance. Here the safe rate of interest to charge is bound to vary according to the real value of the security, but in any event is not in quite the same category as an advance which is merely made on "personal security." Probably somewhere between 20 per cent. and 60 per cent. per annum, will be found correct.

(iii) Where the advance is not secured by anything beyond mere personal security, but the borrower is a responsible person in a reasonably good position and not—so far as the lender is aware—in any other financial difficulties. Here the lender may safely charge up to, but not exceeding, 80 per cent. per annum, according to the borrower's personal stability and reputation.

(iv) Where there is no security beyond mere personal security and the whole transaction is in the nature of a gamble as to whether the lender will be repaid anything or any substantial amount, then the lender is justified in charging a rate of 80 per cent. per annum and over according to the extent of the gamble. There is no finality on this point, but it is unlikely that in such a case the court would allow more than was in fact allowed in *Parkfield Trust* (1935), *Ltd.* v. *Portman* (1937), 81 SOL. J. 687, namely, 177.7 per cent. per annum. In this connection it may be noted that in *Dunn Trust, Ltd.* v. *Asprey* (1934), 78 SOL. J. 767, the astronomical rate of interest of 480 per cent. per annum was reduced to 100 per cent.

In conclusion, returning for a moment to the recent case of *Grosvenor Guarantee Trust, Ltd.* v. *Colleano and Another, supra*, it is respectfully submitted that the rate of interest allowed by the court in that case struck a very fair balance between the parties to the transaction in the light of the facts set out above. It looks as if this case came within the third of the propositions above stated, and the "gamble" rate of interest charged of 150 per cent. per annum was not justified.

M.

DISCOMFORT AND HURT FEELINGS COMPARED

THE distinction between tort and contract is ever with us. Sometimes it takes the form of an act which may be regarded alternatively as a tort or a breach of contract, and then the question arises whether a claim for damages should be brought as an action in tort or contract. At other times one meets the case of an act which is both a breach of contract and also one which, it is alleged, caused damage in addition to the normal loss arising from the breach of contract. It is this latter point which was recently before the court in *Bailey* v. *Bullock and Others* [1950] W.N. 482 ; 94 SOL. J. 689. This is really a question of the measure of damages, the general rule being that the measure of damages is such as will put the plaintiff in the same financial position as he would have been in had there been no breach of contract, so far as money can do it ; the question is to what extent there are exceptions to that rule, and in particular whether, when a breach of contract gives rise also to discomfort or resentment, damages may be awarded for them.

The leading case on this point is *Addis* v. *Gramophone Co.* [1909] A.C. 488, where the manager in India of the defendant company first learned of his own dismissal and replacement by another from the local bank manager, followed by the sudden arrival of his successor. This was naturally rather painful and the question was whether, in a claim for wrongful dismissal, there could be included a sum for injury to feelings on account of the manner of dismissal. That the matter was by no means free from difficulty is shown by the fact that the House of Lords' decision was by a majority, Lord Collins delivering a careful dissenting speech ; but this, of course, is of no value now so long as the House of Lords continues its policy of being bound by its own decisions. The learned Law Lord made comparisons with the right to claim damages for breach of promise of marriage covering injured feelings, and suggested that this represented the application of a general rule rather than an exception, but this view did not prevail with the majority, and the plaintiff was told, in effect, that if he was to claim damages for injured feelings he must do so within the law of defamation if he could fit his case into that branch of the law ; but that they could not be claimed as arising out of the breach of contract.

In the recent case of *Bailey* v. *Bullock and Others, supra*, Barry, J., asserted that there was a distinction between the vexation (would not resentment be a more appropriate word ?) suffered by the plaintiff in *Addis's* case, and a claim for physical discomfort. The claim was for the inconvenience suffered by the plaintiff in his having to live with his father-in-law for a year and nine months because of the negligence of the defendants' clerk in handling his case for possession of his own house, the defendants being a firm of solicitors (on whom no reflection personally was cast). Much reliance was placed by the defendants on various observations of the Court of Appeal in *Groom* v. *Crocker* [1939] 1 K.B. 194, which may be remembered as the knock-for-knock case, wherein a client claimed damages from his solicitor (who also acted for the insurance company) in admitting negligence in an action in which it was known that he had not been negligent. Quoting *Addis's* case, the court held that damages for injury to the plaintiffs' reputation could not be awarded in an action for breach of contract. Both these cases were claims for damages for hurt feelings falling short of defamation, though akin to it, and therefore the principle is not applicable to *Bailey* v. *Bullock, supra*, if a claim for

damages for discomfort can be distinguished from a claim arising from hurt feelings. The fact that damages for hurt feelings is allowable in an action for breach of promise although it goes beyond monetary compensation into the realm of punitive damages must be regarded as an exception, and the fact that damages may be awarded for wrongfully dishonouring a cheque (which is also akin to defamation) is another exception and, in any event, is based on the damage to one's credit which is a matter *sui generis*.

What then is the distinction between resentment and discomfort? Why should damages be awarded for one and not for the other? The answer supplied by Barry, J., and derived from a consideration of cases like *Burton* v. *Pinkerton* (1867), L.R. 2 Ex. 340, and *Hobbs* v. *London & S.W. Rly. Co.* (1873), L.R. 10 Q.B. 111, is simply that discomfort can be removed by purchasing comfort, whereas solace for hurt feelings cannot be purchased. (The writer resists the temptation to suggest how this might be done!) Hence a man who is put to discomfort by a breach of contract has two courses open to him: either he may purchase comfort and charge the defendant, or he may bear the discomfort and charge general damages of the order of the amount by which he would have been out of pocket had he relieved his discomfort. So in *Burton* v. *Pinkerton*, *supra*, where a seaman agreed to serve on board a vessel which, in the course of its voyage, acted as a supply ship to Peruvian men-of-war during hostilities between Peru and Spain (with both of whom England was at peace), it was held that he was entitled to treat this as a breach of contract and to claim not only loss of wages but also damages for the inconvenience suffered when he left the ship at Rio and was imprisoned as a Peruvian deserter, though it was held that these were not to extend to the fact of imprisonment (on the ground of remoteness). No doubt he could have purchased comfort by employing someone to manage his safe return. In *Hobbs* v. *L. & S.W.R.*, *supra*, the plaintiff and his family were put on the wrong train and so found themselves at Esher late at night instead of at Hampton Court, as a consequence of which they had to suffer the inconvenience of walking home in the rain, for which damages were awarded. They could have hired a carriage had one been available and charged the cost as special damage.

So in *Bailey* v. *Bullock*, *supra*, counsel admitted that the plaintiff might have mitigated the inconvenience which he was put to by taking rooms at a hotel, and that had he done so it would have been extremely difficult for the defendants to have resisted a claim for special damage based on the extra cost of such accommodation.

L. W. M.

Costs

BANKRUPTCY—IV

We have been asked whether the rules relating to costs in bankruptcy apply also to compositions made between a debtor and his creditors, and whether the costs of a trustee under a deed of arrangement must be taxed. The answer to both questions is, subject to reservations, in the negative.

Provisions with regard to deeds of arrangement are contained in the Deeds of Arrangement Act, 1914, and nothing will be found therein relating to costs, neither as to the scale on which they are to be compiled nor as to the taxation thereof, except in s. 15. This section contains the only reference that will be found in the Act relating to costs, and it provides that where, in the course of the administration of the estate of a debtor who has executed a deed of arrangement, or within twelve months of the date when the final accounts of the estate are rendered to the Board of Trade, an application is made by a majority of the creditors who have assented to the deed for an official audit of the trustee's accounts, then the Board of Trade shall cause such accounts to be audited, and in such case the Board shall have power to require production of a certificate of taxation in respect of any costs which the trustee has paid or charged in his accounts.

It is significant to notice here that the section provides that where an audit of the accounts has been demanded, then all the provisions of the Bankruptcy Act, 1914, relating to the institution and enforcement of an audit of accounts shall apply. The application of the Bankruptcy Act, 1914, is thus specifically limited, with the result that s. 83 of the latter Act does not apply. This section, it will be remembered, provides that all bills for solicitors' costs shall be taxed before they are allowed in the trustee's accounts. There is no counterpart of this section in the Deeds of Arrangement Act, 1914, and where, therefore, the Board of Trade requires a certificate of taxation in respect of any costs charged in the deed trustee's accounts, the trustee will have to have the costs taxed under the provisions of the Solicitors Act, 1932.

This, however, may give rise to difficulties, for it will be recalled that s. 66 of the Solicitors Act, 1932, in making provision for the taxation of a solicitor-and-client bill of costs, specifically states that the application for taxation must be made within twelve months after the delivery of the bill, and that if the application is made more than twelve months after payment of the bill no order for taxation shall be made.

This is likely seriously to embarrass the trustee who has already paid the solicitor's bill of costs more than twelve months before the application is made for an official audit of the trustee's accounts, for the trustee could not then demand that the bill shall be taxed, and it would require the consent of the solicitor for such a taxation to take place. The answer to this seems to be that, for his own protection, and although there is no provision requiring him to do so, the trustee should in every case require the solicitor to have his bill of costs taxed under the provisions of the Solicitors Act, 1932. The trustee will thus be in a position to meet the requirements of the Board of Trade if an official audit is demanded.

Whilst we are dealing with the question of costs in relation to deeds of arrangement, it would be as well to touch briefly on the scales applicable. In the first place, there are the costs of the deed itself. The preparation of the deed is, of course, non-contentious business, so that Sched. II to the General Order, 1882, will apply. This means that attendances will be charged at 10s. and the drawing of the documents will be charged at the rate of 2s. per folio, whilst the engrossing of the documents will be charged at 8d. per folio.

The bill of costs for the preparation of the deed itself will commence with the item of instructions, which is intended to include all the preliminary work in connection with the bringing of the parties together, such as attendances on and correspondence with the creditors and the debtor and settling the terms of the deed and the appointment of the trustee. The amount of the allowance will depend on the amount of work actually done by the solicitor, and the normal minimum fee of 10s. will be charged, increased according to the circumstances of the case. For the actual drawing of the deed, the solicitor will be entitled to a charge of 2s. per folio, whilst 8d. per folio will be allowed for engrossing the document.

The execution of the deed by the various parties may or may not be effected by correspondence, but it is usual for an allowance of 10s. to be made for attending on each of the parties to obtain their signature to the deed.

The execution of the deed must be verified by a person who attended and saw the debtor execute the document, and for this there will be allowed for drawing and engrossing the affidavit, which is a formal document, a fee of 5s., whilst 6s. 8d. will be allowed for attending to swear the affidavit. A copy of the deed is exhibited to the affidavit, and a fee of 4d. per folio is allowed for this, together with the customary 1s. for marking the exhibit.

In addition to the affidavit verifying the execution of the deed there must be filed an affidavit of the debtor stating the estimated amount of the assets and liabilities and containing a schedule setting out the names of the creditors and their addresses and the amount of the debts respectively owing. For this affidavit, the solicitor will be entitled to 1s. for drawing, 4d. for engrossing and 6s. 8d. for attending on the debtor and obtaining his execution of the affidavit. The reason for the allowance of only 1s. for drawing the affidavit in this instance is that it is a formal document in statutory form, requiring only the detailed information to be filled in.

The deed is then stamped, and the usual allowance is made for this according to the amount of the stamp duty. A fee of 10s. is also allowed for attending to register the deed and to file the affidavits with the registrar appointed by the Board of Trade, whilst a fee of 3s. 6d. will be allowed for writing to the deed trustee with the duly registered deed.

It is then necessary to notify the creditors of the registration of the deed and serve the form of assent. A fee of 3s. 6d. will be allowed for drawing the letter and, if there are more than ten creditors, the letter will be printed and an allowance of 3s. 4d. will be made for attending on the printer and instructing him. Similar allowances will be made for drawing the letter acknowledging the assent of the creditors and attending on the printer to have the letter printed, whilst a fee of 6d. per letter is normally made for despatching the letters to the creditors.

Following this a statutory declaration must be made by the trustee stating that the requisite number of creditors have assented to the deed, and for this the solicitor will be entitled to a fee of 3s. 4d. for drawing and engrossing the statutory declaration, 6s. 8d. for attending on the trustee and obtaining execution thereof and 3s. 4d. for attending to file the statutory declaration with the registrar. Again, this is a formal document.

After this there comes the meeting of creditors at which general directions are given to the trustee, and it may be that the creditors will be willing to dispense with security by the trustee. In respect of the meeting of creditors, the solicitor will be entitled to a fee of 10s. per hour, under Sched. II to the General Order, 1882, whilst the fees for the statutory declaration by the trustee that the creditors have dispensed with security will be the same as for the statutory declaration mentioned in the preceding paragraph.

Where the creditors do not agree to dispense with security by the trustee, then an application will have to be made to the bankruptcy registrar of the district in which the debtor resided or carried on business at the date when the deed was executed. A fee of 6s. 8d. is allowed as instructions to apply to the registrar, and 3s. 4d. for attending and bespeaking and afterwards obtaining an office copy of the debtor's affidavit as to the amount and value of the assets and liabilities. There will be allowed for preparing the application to the registrar a fee of 5s., whilst 6s. 8d. will be allowed for attending on the registrar when the amount of the security is fixed. The usual fee for a letter will be allowed for writing to the trustee and informing him of the amount of the security so fixed, whilst 6s. 8d. will be allowed for attending and lodging the trustee's security bond in the Bankruptcy Court, when received.

That will conclude the solicitor's costs for preparing and registering the deed of arrangement and the other requisite documents. So far as the remainder of his charges are concerned, these, as we have observed before, will depend on the circumstances of the case. If he acts for the trustee in non-contentious matters, then, unless those matters relate to the completed sale, purchase or mortgage of land and property, or the leasing thereof, the fees will be regulated by Sched. II to the General Order, 1882, whilst if completed property transactions are involved, Sched. I to the Order will apply. On the other hand, where the solicitor is required to take action in connection with any of the assets of the estate, or to defend claims made on the debtor in any court, then the scale appropriate to the court concerned will apply.

There we will leave the question of costs in relation to deeds of arrangement, and in our next article on the subject will consider some of the allowances in relation to costs in connection with bankruptcy again.

J. L. R. R.

A Conveyancer's Diary

THE PAST YEAR AND THE CONVEYANCER

From the conveyancer's point of view 1950 has been an uneventful year. The Legislature has been busy with other matters and, apart from the Finance Act, the only measures passed into law in the last year which concern the property lawyer to any extent are those dealing with such relatively unimportant or unusual questions as the provision of cattle grids on highways and subsidence caused by mining.

As for the reported cases, these seem to have run in spates in recent years. The year 1949 was notable for an unusually large number of reported decisions on the Inheritance (Family Provision) Act, 1938, an Act which, as Mr. Michael Albery's recently published book has shown, is much more difficult to interpret and operate than most of us had realised. Similarly, 1950 has seen a number of decisions of first-rate importance on those sections of the National Health Service Act, 1946, which deal with the property and property rights of hospitals affected by the Act. Taken together, these cases were the most interesting events of the year to the property lawyer, but there were two other series of decisions on distinct topics which deserve some notice, those on some hitherto largely unexplored portions of the estate duty legislation, and those on the right of estate agents to receive a commission from their principals on the introduction of a "purchaser" or the like.

Of the cases on gifts to hospitals affected by the 1946 Act, pride of place goes to *Re Morgan's Will Trusts* [1950] Ch. 637 and *Re Glass, ibid.*, 643*n*. In both these cases the question for decision was the validity of a testamentary gift made by the will, dated before the appointed day for the purposes of the Act, of a testator who died after that day, to a hospital transferred to the Minister by virtue of the Act. In the former case the gift was a gift for the benefit of the L hospital,

and in the latter a gift simply to the hospital in question. Roxburgh, J., upheld the former gift largely (as it seems to me, at least) on the special wording of the gift, but Vaisey, J., considered the latter gift to be indistinguishable from the former, and upheld that too. These decisions, as also those in *Re Dean's Will Trusts* (1950), 94 SOL. J. 239, and in *Re Frere* [1950] 2 All E.R. 513, which show that a hospital does not lose its quality as a charitable institution by reason of its transfer to the Minister under the Act, are evidence of a trend on the part of the bench to disregard the verbal difficulties of the relevant provisions of the Act and to give effect to its substantial aims. A full report of *Re Morgan's Will Trusts, supra*, has just appeared, in which the arguments are noted, and it is therefore now possible to consider this decision and measure its implications, as it has not been possible hitherto, in detail. I propose to devote some space in this "Diary" to a full examination of this case in the near future, and nothing more need be said of it now.

Two cases served to show the comparatively narrow scope of s. 43 of the Finance Act, 1940, when considered by itself, for although the claim of the Crown to estate duty was upheld in both the cases, it was only by bringing in s. 56 of the same Act and reading the two sections together that this result was achieved. The two cases were *Attorney-General* v. *St. Aubyn* [1950] 2 K.B. 451*n*, and *Attorney-General* v. *St. Aubyn, ibid.*, 429, cases which had nothing to do with each other, for the claim in each was founded on the death of a different person. As a result of these decisions, or at least of the former, the original s. 43 has been amended by s. 43 of the Finance Act, 1950, with results in some directions which it is extremely difficult to assess. A somewhat similar fate befell the decision in *Re Earl Fitzwilliam's Agreement* [1950] Ch. 448, in which Danckwerts, J., examined the historical background of s. 2 (1) (*c*) of the Finance Act, 1894 (the provision which renders liable to estate duty gifts made by the deceased before his death), and showed that the commonly accepted view that all dispositions by the deceased were *prima facie* liable to estate duty under the Act of 1894, whether made for value or not, was not justified by the language of the Act or of the earlier legislation incorporated by reference in the Act. Section 47 of the Finance Act, 1950, has restored the *status quo ante*, and this interesting decision is therefore robbed of all but an academic interest.

No less than four decisions of the Court of Appeal on the right of estate agents to commission show, amongst other things, the diversity of forms used by estate agents in drawing up their contracts with their principals. The estate agent, naturally enough, wants to secure his commission as soon as he has introduced to his principal a person who expresses his willingness, whether qualified in any way or not, to purchase the premises; the courts, on the other hand, exhibit a tendency to interpret these contracts in such a way as to make the claim to commission arise only on the execution of a valid and unqualified contract to purchase (see, e.g., *Fowler* v. *Bratt* [1950] 2 K.B. 96).

These three lines of decision apart, there have been very few cases of note during 1950—none at all on the vendor and purchaser relation, and only one on the 1925 legislation, that being *Re Bradshaw* (1950), 94 SOL. J. 162, a case on s. 51 of the Administration of Estates Act, 1925. Still noticeable is the continued absence of decisions on the statutory trusts, a matter of perennial surprise to practitioners who know from their daily experience how much trouble the provisions dealing with statutory trusts still give.

The practice of conveyancing has continued to remain much less affected by the planning legislation than we were led to expect a couple of years ago, at least so far as the settling of conveyancing instruments is concerned. This is, of course, largely due to the refusal of parties to admit the inclusion of novel and untested matter in the absence of some express stipulation in the contract providing for the insertion of additional clauses dealing with the parties' rights and liabilities under the new code. Neither of the two widely used sets of common-form conditions of sale contain any such stipulation, and it is rare for a special condition to be added to make the necessary provision, unless the property is such that it calls for unusual treatment in this respect. The result is that conveyancing instruments are still usually settled in the old manner with some slight addition or modification in those cases, such as mortgages, where rights are created in favour of persons not in occupation of the premises and are thus peculiarly liable to suffer as the result of some planning default on the part of the occupier. There has been no reported case on the effect of some of the suggested planning covenants and clauses, but certain *obiter dicta* which have fallen from one Chancery judge, at least, suggest that, when they do come up for judicial examination, these forms are likely to be scrutinised with great care, and perhaps a little distaste.

"A B C"

Landlord and Tenant Notebook

DIFFERENT KINDS OF ORDERS FOR POSSESSION

ONE of the lessons of *American Economic Laundry, Ltd.* v. *Little* (1950), 94 SOL. J. 803, is that there are two species of order for possession, one of which can be divided into two sub-species.

The facts were that on 20th September, 1949, a three-months' order had been made in another action, brought against the defendant's father for the possession of controlled premises of which he was then the statutory tenant, the plaintiffs having satisfied the court of the existence of the "nuisance" ground. On 5th December the defendant in that action applied for an extension, and was given till 20th January, 1950. On 3rd March he asked for another extension and this time the court made 3rd April the date. Before that date he died, leaving his daughter in actual possession. She had lived with him on the premises for some twelve years preceding his death, and no nuisance was alleged against her. The plaintiffs brought an action for possession against her as a mere trespasser, but the county court judge held that she fell within s. 12 (1) (*g*) of the Increase of Rent, etc., Act, 1920: i.e., that she was a member of the deceased tenant's family residing with him at the time of his death, and therefore the tenant.

This, of course, involved a finding that the deceased father had been tenant when he died, and necessitated an examination of the provisions of s. 5 (2) of the same statute: "At the time of the application for or the making or giving of any order or judgment for the recovery of possession . . . or in the case of any such order or judgment which has been made or given . . . and not executed, at any subsequent time, the court may adjourn the application, or stay or suspend execution of any such order or judgment, or postpone the date of possession, for such period or periods as it thinks fit, and subject to such

conditions (if any) in regard to payment by the tenant of arrears of rent, rent, or mesne profits and otherwise as the court thinks fit, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment."

It will be observed that the word "or" occurs several times in the subsection cited, and a number of divisions and sub-divisions could be made accordingly; but it so happens that what matters is rather the word "and" followed by "subject to such conditions," etc. For the effect of the new authority is to emphasise that the enactment provides for two kinds of postponement: absolute, and conditional. In the case before the court, the order had been absolute, execution being suspended for a given period, with the result that the defendant's father was not a tenant when he died. But the court deliberately refrained from saying what it thought the position would have been if the order had been a conditional one.

Three authorities were referred to in the judgment delivered by Somervell, L.J.; in none of them did the nature of an order for possession come under review, but each discussed that of a "statutory" tenancy. First, *Keeves* v. *Dean* [1924] 1 K.B. 685 (C.A.), which may well be considered the leading case on the subject: after carefully examining the position, the court held that a statutory tenant had but a personal right to remain in possession, which he could not assign; but a number of questions were reserved, such as that of the right to sub-let, and that of a person who succeeded on the death of a statutory tenant. Then, *Brown* v. *Draper* [1944] K.B. 309 (C.A.): this was the case in which a statutory tenant was held to have remained such though not personally in possession, as he had left his wife (the defendant) and some furniture in the dwelling-house when he moved out. Presumably the point referred to in the recent case would be that made in the judgment where it says: "At common law the wife would, it is true, have no defence to this action. Moreover, she cannot in her own right claim the protection of the Acts since she is not the tenant but a mere licensee," but, after examining the position under these Acts, concludes: "The protection of the Acts extends, in our opinion, to protect a licensee of the tenant, not because the licensee can claim the protection of the Acts in his or her own right, but because the tenant is a necessary party to the proceedings, and no order can be made against his licensee in his absence." The other authority mentioned was *Bolsover Colliery Co., Ltd.* v. *Abbott* [1946] K.B. 8 (C.A.), in which landlords recovered possession from the son of a deceased tenant to whom they had let the house in consequence of his employment by them, on their proving that they required it for a whole-time employee. It was held that the son's tenancy was subject to the same defeasance. The headnote says ". . . when the defendant succeeded to that tenancy," which, in view of *Tickner* v. *Clifton* [1929] 1 K.B. 207 (rent owed by deceased not recoverable from daughter), is not strictly accurate; and though Scott, L.J., did once speak of the son having received "the" tenancy the judgments as a whole did treat his interest in the house as a new creation. The court adopted the view that "the tenant" in para. (*g*) (i) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933 (on which the plaintiffs relied), meant "the tenant to whom the house was let," i.e., the original tenant, the words "let to him" supporting this; and the argument based on the definition in s. 12 (1) (*g*) was met by pointing to the "except where the context otherwise requires" which qualifies the opening words of the subsection.

The basis of the new decision appears to have been that, whatever was the status of the deceased's father when he died, it was not, and apparently had not been since 20th September, 1949, that of a statutory tenant. What the position might be as regards other rights and obligations, e.g., those concerned with repairs, with trespass, or suretyship of some third party, are matters on which it remains difficult to express any decided views. As to conditional orders, the most common condition made is, of course, one providing for payment of so much off the arrears with future payments of rent. *Reeks* v. *Shelley* (1920), 36 T.L.R. 868, was an early example of what the Act authorised; in a High Court action for possession, Sankey, J., virtually treated s. 5 (2) as giving the court a power to relieve analogous to the power exercisable in forfeiture cases, and made an order for possession "to be discharged if the defendant paid the plaintiff on or before 21st August next" the arrears and mesne profits claimed. It is rash to speculate when a court has deliberately refrained from discussing a question, but I think that there is much to be said for the view that a defendant in such a case remains a statutory tenant during the probationary period and that if he dies during that period his personal representative (*Tickner* v. *Clifton* did not, of course, suggest that the debt was extinguished!) could pay up and so discharge the order, the widow or resident member of the deceased's family thus qualifying for a statutory tenancy.

The main distinction between orders affecting controlled premises and others is that no court can, without exceeding its discretion, make what is commonly called a "long order" in the latter type of case: *Sheffield Corporation* v. *Luxford* [1929] 2 K.B. 180 was a case of a "council house" (to which the Rent Acts do not apply); the court of first instance made a twelve-months' order; the Divisional Court held that this could not stand. Another distinction, for what it is worth in these times, is that a landlord can, after obtaining, say, a fourteen-days' order, evict the tenant himself before that period has elapsed (see *Jones* v. *Foley* [1891] 1 Q.B. 730).

R. B.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Conveyances under the Settled Land Acts

Sir,—The moral which your contributor draws in his article under this heading in the Journal of the 16th December cannot be disputed, but does not go far enough.

It is, no doubt, impossible to prevent a determined and deliberate fraud altogether; the best we can do is to make it as difficult as we can.

The facts in *Weston* v. *Henshaw* are peculiar and the Law Report appears to leave something to the imagination of the reader. We are not told whether any memorandum was put on the probate or the 1927 conveyance. I think that most solicitors would regard the last conveyance as the one to be endorsed. That would not have been of any avail in this case.

The case shows that special precautions must be taken to meet special circumstances and that solicitors are in yet another instance required to act as unpaid police to prevent crime.

The moral which I draw is that the Settled Land Act procedure is too artificial and apt to defeat the real intentions of the settlor and that the tenant for life ought not to be the person with the power of sale nor custody of the title deeds.

CLERICUS.

London, E.C.4.

PRACTICAL CONVEYANCING—XXV

Title Commencing with a Will or Probate

A general devise is never a good root of title under an open contract, but a specific devise may be. Where the testator died after 1897, but before 1926, the legal estate in his land vested in his personal representatives but an express or implied assent by them made a devise effective in favour of the beneficiary. Therefore, a specific devise in the will of such a testator is a good root of title unless death was less than thirty years ago, in which case it may be made such by a condition in the contract. The relevant parts of the will should be abstracted, together with the probate or letters of administration, and any express assent. Although it is not often done, a well-drawn abstract should state any facts relied on as constituting an implied assent to a beneficiary.

Where death took place after 1925 the will takes effect in equity only and should not be abstracted. If the land has been vested in a beneficiary the documents to be abstracted will be the probate, the assent, and any memorandum of the assent endorsed on the probate. A condition of sale might make the probate or the assent the root of title. When imposing such a condition one should bear in mind the rule that a purchaser is entitled to assume that a document less than thirty years old made the root of title by a condition was a document before the execution of which title would have been investigated. If it was not such, for instance if it was a voluntary conveyance or an assent, then, unless its nature was clearly stated, the purchaser will not be bound by the condition and will be able to require the vendor to show a full thirty-year title.

Following these introductory remarks, it is desired to draw attention to a common form condition of sale which is often overlooked. In passing, perhaps one may remark on the tendency to use the shorter form of The Law Society Conditions which incorporate by reference, but do not set out, the General Conditions. A copy of the General Conditions is not always readily available and so solicitors are inclined to incorporate The Law Society General Conditions in a contract without considering their precise effect.

The provision relevant to the matter under discussion is Condition 11 of the current Law Society General Conditions of Sale which applies where the property is freehold, and the contract provides that title shall commence with a will, probate or letters of administration. In such cases if the deceased died not less than twelve years before the date of the contract the condition requires that, unless the contrary appears, the purchaser must assume that the deceased was seised of the property at his death for a legal estate in fee simple in possession free from incumbrances, and no evidence on this point may be required.

In order to see the effect of this provision, let us assume, first, that the deceased died in 1924. In this case the will would be stated as the root of title. It is apparent that if the devise was a specific one with a clear description, General Condition 11 will have no effect because the term stating that the will should be the root would be effective and the purchaser could not in any case call for any evidence of seisin of the testator. On the other hand, if the devise was general, then General Condition 11 will mean that the purchaser can call for no evidence of seisin at death. The result may be that all he will get is an abstract of a will and of probate or letters of administration, together, perhaps, with particulars of an alleged implied assent. Unless the land has been dealt with in the meantime by a recognisable description this position is most unsatisfactory.

Secondly, if the death was, say, in 1930, the probate or letters of administration will be made the root of title. In this case the will (if any) does not appear on the title and there is no distinction between a general and specific devise. Unless the personal representatives sold under their powers there should be a written assent to the person entitled to the legal estate. But this is not altogether satisfactory because (i) the description of the land in an assent is often incomplete, (ii) one cannot be sure that the assent mentioned any incumbrances created by the testator or intestate, (iii) there is no investigation of title when an assent is executed. Nevertheless, General Condition 11 does not enter into the matter. The purchaser has agreed to take a twenty-year title commencing with the probate or letters of administration and he must accept the risks which follow.

Thirdly, we must consider the case where the deceased died less than twelve years before the date of the contract, say in 1940. If the contract had provided that the probate or letters of administration should be the root of title and had said nothing more then the purchaser would have been able to obtain no proof of the testator's seisin and would have obtained a very doubtful title. However, where the deceased died less than twelve years before the contract General Condition 11 provides that the purchaser will be entitled to be furnished, at his own expense, if he so requires, with a statutory declaration by a competent declarant stating the seisin of the deceased free from incumbrances. Therefore, in this instance, the condition materially helps the purchaser.

The wording of Condition 8 of the National Conditions of Sale is somewhat different, but its effect is much the same although it applies only where title commences with a will or probate.

One of the main purposes of Conditions of Sale is to relieve the vendor from some of the more onerous duties which he must discharge under an open contract. Nevertheless, one may reasonably ask that standard conditions should not operate unduly in his favour. The effect of Condition 11 of The Law Society's Conditions appears unfair to a purchaser who accepts a title commencing with a will more than twelve years old because if the will contains merely a general devise the purchaser will be barred from calling for evidence of seisin. If the root is to be probate or letters of administration of a deceased who died more than twelve years ago the purchaser must know that he may not get an adequate description of the land in the abstract and the condition is unimportant. A purchaser who accepts a root of title less than twelve years old runs a serious risk and in this case Condition 11 does give him as much assistance as he can reasonably expect.

J. G. S.

LANDS TRIBUNAL PRACTICE NOTE

A notice of appeal to the Lands Tribunal against the determination of the Central Land Board or against the decision of a local valuation court must be in the name of and signed by the claimant, appellant or legal representative.

Where an agent or other representative is acting a written authority signed by the claimant or appellant must accompany the notice of appeal.

Attention is directed to r. 52 and Sched. III of the Lands Tribunal Rules, 1949, which prescribe the stamp fees payable on lodging documents.

DARLINGTON COUNTY BOROUGH DEVELOPMENT PLAN

The above development plan was submitted on 20th December, 1950, to the Minister of Town and Country Planning for approval. A certified copy may be inspected free of charge at the Town Hall, Darlington, from 10 a.m. to 5 p.m. on weekdays (Saturdays, 9 a.m. to 12 noon). Objections or representations, which should include a statement of the grounds for them, may be sent to the Secretary at the Ministry before 28th February, 1951, and persons making them may register with the council to receive notice of the eventual approval of the plan.

HERE AND THERE

DOWN IN THE FOREST

WITH the Twelve Days of Christmas behind them the Forestry Commission can now settle down to lick their wounds and count their casualties—not, of course, victims of any bacchanalian festivities which perhaps, in a differently constituted Welfare State, one might expect to be traditional in that branch of the public service, but casualties of a somewhat different description. A realist who saw things according to their nature, and not pallidly filtered through White Papers and Blue Books, might reasonably look for a certain primitive grandeur in the departmental traditions of the Guardians of the Trees. To the judges their scarlet and ermine and their assize trumpeters. To the soldier his Colours and his martial music and, even in these technological days, some remains of panoply, pride and pomp. But winter or summer, Christmastide or St. John's Eve, one would search the glades in vain for the crash of axes and the crackle of leaping flames as the Commissioners, the Assistant Commissioners and their Secretary hold seasonable orgy under the greenwood tree.

> "There is no mid-forest laugh
> Where lone echo gives the half
> To some wight amazed to hear
> Jesting in the forest drear."

GREENWOOD CRIME

THE only approach to a mid-forest laugh that came from the Forestry Commission this happy Christmas season came over as an item in the Northern news on the B.B.C., and was inspired by those casualties which are apparently deeply distressing the statisticians and chartered accountants at the sign of the "Up-to-Date Verderer." So far as they are concerned the feast of friends and of the candle fruited tree is a dead loss. As the days shorten and the dark comes early, when the dim sun hath in Sagittarius his "halfe cours i-ronne," as good things of day begin to droop and drowse and night's black agents to their prey do rouse, as the crow makes wing to the rooky wood, sinister figures stalk determinedly in the same direction with knives and hatchets ruthlessly bent on murder and destruction. Before their felon stroke down go the forests of to-morrow, the little trees slaughtered like the Innocents in their infancy. And who are the wretches who shed the green blood of these tender saplings? Not organised gangs, says the voice of the Forestry Commission through the B.B.C., but solicitors and bankers who do not appear to realise that they are doing wrong. Obviously not for them the innocence of the dawn of the world; rather the vices of chicanery and usury have so atrophied their moral sense that, in thus despoiling the State to provide a Christmas tree for the nursery at home, they are no more troubled by superfluous pangs of conscience than is the fox carrying off a fat chicken to the hungry little cubs in his earth. No doubt the official statisticians could throw in massed calculations to substantiate this, on the face of it, somewhat singular revelation. Doubtless the docks in all the courts of the regions adjoining our forests are crowded at Christmas time with men hitherto respectably regarded, caught, as the old verderers' jargon went, in "bloody hand," with the victim of their crime still warm in their grasp or maybe in "back bear" with the severed trunk emerging from the shooting brake.

SAD CASE

LAST year there was just such a case in Hampshire. A gentleman of hitherto undoubted distinction, a colonel, and a pillar of what was once the British Empire, for he had long served as a magistrate at Colombo, was charged with taking a Christmas tree from land near Odiham and was fined £2. He appealed, however, and the court at Winchester accepted his assurance of absence of guilty intent. In the jungles of Ceylon a tree is anybody's to take or carry away and, making what was apparently his first visit to a land of planned economy, he failed to realise the difference. The conviction was quashed, and the colonel took back to the gorgeous East a clearer conception of what are and what are not *bona vacantia* and trees *ferae naturae*. From the point of view of the Forestry Commissioners and their brother planners, the trouble with lawyers is that they know perfectly well that law breaking and wrongdoing can be totally different things. They're not long in the human contacts of practice without learning the distinction, but the bureaucrat never learns it, and to him all rules are equally sacred. Not long ago Stable, J., having genially observed that he had done some poaching in his time, added that "poaching is one thing but this business of going about at night with a gun is going on too much. It is not difficult for guns to go off." (Eighteen months for a night poacher who had assaulted a gamekeeper.) There was the late MacKinnon, L.J., who made no bones about saying that he trespassed every week, and during the war there was the celebrated case of Barnard, J., *et alios*, sea-bathing in a prohibited area and summoned to answer for the offence. No, in matters of that sort I do not think that lawyers will ever be found extravagantly law-abiding. RICHARD ROE.

NEW YEAR LEGAL HONOURS

PRIVY COUNCILLORS

The Hon. Sir OWEN DIXON, K.C.M.G., Justice of the High Court of the Commonwealth of Australia.

The Rt. Hon. HENRY CHARLES PONSONBY, Earl of DROGHEDA, K.C.M.G., Chairman of Committees, House of Lords. Called by the Inner Temple, 1935.

KNIGHTS BACHELOR

Mr. DAVID EDWARDS, Colonial Legal Service, Chief Justice, Uganda.

Mr. LEONARD STANISTREET HOLMES, LL.M., J.P., President of The Law Society. Admitted 1907.

The Hon. EDWARD GEORGE PERERA JAYETILEKE, K.C., Chief Justice of Ceylon.

Prof. DAVID HUGHES PARRY, LL.D., Professor of English Law, University of London. Called by the Inner Temple, 1922.

Mr. FRANCIS HAROLD PEAKE, Controller of Death Duties, Board of Inland Revenue. Called by Lincoln's Inn, 1915.

The Hon. ROBERT CLARKSON TREDGOLD, C.M.G., Chief Justice of Southern Rhodesia. Called by the Inner Temple, 1923.

ORDER OF THE BATH

K.C.B.

Sir ALGAR HENRY STAFFORD HOWARD, K.C.V.O., C.B., M.C., T.D., J.P., D.L., Lately Garter Principal King of Arms. Called by the Inner Temple, 1905.

C.B.

Mr. MITCHELL MACDONALD DOBBIE, Under-Secretary, Ministry of Town and Country Planning. Called by Gray's Inn, 1927.

Mr. ANDREW LOCKHART INNES, Legal Secretary and Parliamentary Draftsman, Department of the Lord Advocate. Advocate, 1924.

Mr. ROBERT BERNARD WATERER, Principal Assistant Solicitor, Board of Inland Revenue. Admitted 1917.

ORDER OF ST. MICHAEL AND ST. GEORGE

C.M.G.

Mr. KENNETH MCGREGOR, Under-Secretary, Board of Trade. Called by Lincoln's Inn, 1935.

Mr. WILLIAM LEONARD DALE, Deputy Legal Adviser to the Secretary of State for the Colonies. Called by Gray's Inn, 1931.

Mr. STELIOS PAVLIDES, Attorney-General, Cyprus.

ORDER OF THE BRITISH EMPIRE

G.B.E.

The Rt. Hon. SAMUEL LOWRY, BARON PORTER, M.B.E., LL.D., for services as President of the International Law Association.

C.B.E.

Mr. CLARKSON LEO BURGESS, Clerk of the Peace for the County of London. Called by the Middle Temple, 1927.

Mr. STEPHEN EDGAR CHISHOLM, Assistant Comptroller, Patent Office. Called by Gray's Inn, 1944.

Sir ERNEST BASIL GIBSON, J.P., Chairman, Sheffield Regional Hospital Board. Admitted 1908.

Mr. WILLIAM SYDNEY JONES, Chief Registrar, Chancery Division, Supreme Court of Judicature.

Mr. CHARLES RANKEN BRUCE PARK, Inspector General of Companies, Companies Liquidation and Bankruptcy Department, Board of Trade.

Mr. BERNARD FRANK POOL, O.B.E., Director of Contracts, Admiralty. Called by the Middle Temple, 1921.

Mr. MAURICE ERNEST REED, M.B.E., for services as Legal Secretary, Law Officers' Department. Called by Gray's Inn, 1932.

Mr. BERNARD MORRELL STEPHENSON, Assistant Solicitor, Department of H.M. Procurator-General and Treasury Solicitor. Admitted 1927.

O.B.E.

Mr. JOHN BROCK ALLON, Town Clerk of Wolverhampton. Admitted 1913.

Mr. EMRYS EVANS, lately Town Clerk, Wallasey. Admitted 1917.

Mr. HARRY BORDLEY GREENWOOD, Clerk of the Peace and of the County Council, Westmorland. Admitted 1904.

Mr. JOHN HIRST, A.F.C., Clerk of the River Trent Catchment Board. Admitted 1924.

Mr. ERIC ABEL KNOX, Assistant Clerk of the London County Council.

Mr. FRANCIS DESMOND LITTLEWOOD, Town Clerk of Cheltenham. Admitted 1928.

Mr. KENNETH HARRY STAPLE, Secretary and Legal Adviser, British Overseas Airways Corporation. Admitted 1926.

Mr. WILLIAM GEORGE VENTON, Principal Clerk, Companies (Winding-up) Department, Supreme Court of Judicature.

M.B.E.

Mr. ARTHUR HENRY SMITH, Clerk to the Lord Chief Justice of England.

ORDER OF THE COMPANIONS OF HONOUR

C.H.

The Rt. Hon. Sir STAFFORD CRIPPS, F.R.S., K.C., lately Chancellor of the Exchequer.

The Rt. Hon. ROBERT GORDON MENZIES, K.C., Prime Minister of the Commonwealth of Australia.

REVIEWS

Planning and Compensation Reports. Editor JOHN BURKE, Barrister-at-Law. Sub-Editor J. G. M. RIMMER, B.A., LL.B., Barrister-at-Law. London: Sweet & Maxwell, Ltd. Subscription, 35s. per volume.

The publishers' note states that this series of Planning and Compensation Reports gives a complete coverage of all decisions falling within its scope and, in addition to reports of cases in the House of Lords, the Court of Appeal and the High Court of Justice, the reports cover decisions of the Lands Tribunal, planning appeal decisions given by the Minister of Town and Country Planning and proceedings before magistrates.

The leading cases establishing important principles in connection with the law of town and country planning and compensation will in most cases no doubt be found reported in the existing series of law reports. The value of this series lies rather in the examples that will be found in them of the application of existing principles of law to particular cases arising in connection with planning and compensation and in the decisions of the Minister, the Tribunal and the lower courts. These applications and decisions, while themselves of no real value for citation and in many cases very largely dependent on the facts of a particular case, will provide useful lines of thought and argument for the conveyancer in drafting his documents and the advocate in preparing his cases.

Too many reported cases and decisions of no real binding value as precedents may, after a time, be a source of embarrassment rather than an aid, but, provided that a careful selection of material is made by the editors, this series of reports should be of considerable assistance to solicitors, and to members of other professions, in dealing with the many and difficult problems with which they are faced in the branches of the law which it covers.

The Law of Mortgages. Second Edition. By C. HUMPHREY MEREDITH WALDOCK, C.M.G., O.B.E., B.C.L., M.A., of Gray's Inn, Barrister-at-Law. 1950. London: Stevens and Sons, Ltd.; Sweet & Maxwell, Ltd. 35s. net.

Apart from the rules of practice, which it would be unreasonable to expect to find covered in a students' book, every important principle of the law of mortgages will be found fully treated in these pages, under a logical arrangement and in chapters and sections with well selected and informative headings. The fact that over a thousand cases are referred to shows that the author has done much more than scrape the surface of his subject. Unfortunately, the excellence of the general plan upon which this book is written (which is very good indeed) is not matched by the execution when it comes to matters of detail.

Thus, on p. 206 a note summarises s. 50 of the Law of Property Act, 1925, quite unnecessarily, because the text on the same page contains a fuller account of s. 50. On p. 213 the liabilities of a mortgagee in possession are dealt with at some length, but there is no cross-reference to the fuller exposition of a mortgagee's position in this respect which appears on p. 236 *et seq.* Where cross-references are made, these are usually in the form of references to the sections into which the book is divided, which although numbered are difficult to find without turning to the table of contents, as it is only the chapter numbers and not the section numbers which appear at the head of the pages of the text. Finally, the learned author's language is in places extraordinarily obscure or ill chosen. The statement of the relation between the equity of redemption and the legal estate which a mortgagor now retains, alleged to be taken from Halsbury, does less than justice, in the form in which it appears at p. 205 of this book, to the view of its author (who was not, as is erroneously stated, Sir Arthur Underhill, but the late J. M. Lightwood), and the criticism of that statement which follows is barely intelligible. On p. 206, in dealing with the disposition and devolution of the equity of redemption, the author states that "Dispositions by will must, of course, be in accordance with the provisions of the Wills Act, 1837," a point which it is hardly worth making at all in a book on mortgages, but which if made should at least be made in such a way as not to suggest (as this excerpt would suggest to the inexperienced reader) that the Wills Act contains some special provisions regulating the testamentary disposition of the equity of redemption as an item of property distinct, in this respect, from all other kinds of property. Another example of unilluminating writing is to be found in the treatment of the powers of leasing, the obscurity in this case resulting from a lack of balance in appreciating the

relative importance of the statutory provisions and the law apart from statute. The former is all-important if the position under a modern mortgage deed is to be grasped, but in this section of the book it is the latter which is treated first, and at length, while the statutory power is mentioned at the end as if it was of little importance.

But these faults, serious as they are, should not be allowed to obscure the good qualities of this book. Chief among these is the soundness of the general framework, and if we have dwelt rather long on this book's defects, it must not be forgotten that, as we see them, they affect matters of detail; their removal in a future edition should not be difficult, and with their removal this book will be, what it just fails to be now, an exposition of its subject to be recommended to any serious student of the law of mortgages.

The Lands Tribunal: Jurisdiction, Law and Procedure. By M. DUNBAR VAN OSS, M.A., and NIAL MACDERMOT, of the Inner Temple, Barristers-at-Law, with practical examples by RONALD COLLIER, F.R.I.C.S., F.A.I. 1950. London: Butterworth & Co. (Publishers), Ltd. 35s. net.

For the solicitor in general practice this is a most admirable book. It contains sufficient of both the substantive law on matters coming before the Lands Tribunal and the Tribunal's procedure to fulfil his wants. So far as the substantive law is concerned, the specialist will require something more than this book can, or is intended to, give.

There are 152 pages of text, comprising chapters on the Tribunal and Its Jurisdiction, Compensation on Compulsory Acquisition of Land, Claims for Loss of Development Value, Valuation of Land for Estate Duty, Discharge and Modification of Restrictive Covenants, Valuation for Rating, and Practice and Procedure. Following these are appendices containing practical examples of valuations, statutes, statutory instruments and an example of a valuer's proof of evidence.

The sample valuations and proof of evidence will be of interest to the solicitor, giving as they do an insight into methods of valuation.

Armed with this work, and expert valuation advice, the general practitioner should be well able to do what is necessary to present his clients' claims and bring them before the Tribunal, though valuation is such a complex subject that he will in most cases be well advised to brief counsel who specialises in this branch of the law for the hearing.

The reader unused to the subject should not be led to think, as on a casual reading he might be, by the treatment of s. 52 of the Town and Country Planning Act, 1947, on pp. 25 to 27, and particularly the introductory sentences, that all vacant possession value is eliminated on a compulsory acquisition so that only investment value is recoverable. In practice the compensation is nearer vacant possession value than investment value. The law is correctly stated but requires careful reading; examples in one of the appendices show the precise effect of the provisions.

The book is to be kept up to date by supplements, one of which has already been issued.

BOOKS RECEIVED

National Parks and Access to the Countryside. By NORMAN BROWNING, D.P.A. 1950. pp. xvii and (with Index) 296. London: The Thames Bank Publishing Co., Ltd. 21s. net.

Settlements and Income Tax. By A. F. BROMIGE, Certified Accountant. 1950. pp. (with Index) 146. London: Taxation Publishing Co., Ltd. 15s. net.

Key to Company Law and Practice. Edited by T. BOLTON, A.C.I.S., and PERCY F. HUGHES, F.C.I.S. 1950. pp. 201. London: Secretaries Journal, Ltd. 7s. 6d. net.

Law of Property in Land. By H. GIBSON RIVINGTON, M.A., Solicitor. Fourth Edition. 1950. pp. xxiv and (with Index) 558. London: Law Notes Lending Library, Ltd. 30s. net.

Introduction to English Law. By PHILLIP S. JAMES, M.A., of the Middle Temple, Barrister-at-Law. 1950. pp. xvi and (with Index) 431. London: Butterworth & Co. (Publishers), Ltd. 12s. 6d. net.

The National Parks and Access to the Countryside Act, 1949. With Introduction and Annotations by R. N. HUTCHINS, LL.B., D.P.A., L.A.M.T.P.I., Assistant Solicitor, Derbyshire County Council, and H. F. FULL, A.S.A.A., A.I.M.T.A., Deputy County Treasurer, Derbyshire County Council. With a Foreword by The Rt. Hon. Sir NORMAN BIRKETT. 1950. pp. xvi and (with Index) 374. London: Butterworth & Co. (Publishers), Ltd. 27s. 6d. net.

Consolidated and Other Group Accounts. By T. B. ROBSON, M.B.E., M.A., F.C.A. Second Edition. 1950. pp. (with Index) 152. London: Gee & Co. (Publishers), Ltd. 17s. 6d. net.

Tristram and Coote's Probate Practice. Third (Cumulative) Supplement to the Nineteenth Edition. By H. A. DARLING, a Principal Clerk of the Principal Probate Registry, and T. R. MOORE, LL.B., of the Estate Duty Office. 1950. pp. xvi and 109. London: Butterworth & Co. (Publishers), Ltd. 7s. 6d. net.

Staples on Back Duty. Fifth Edition. By RONALD STAPLES and PERCY F. HUGHES, A.S.A.A., F.C.I.S. 1950. pp. (with Index) 150. London: Gee & Co. (Publishers), Ltd. 21s. net.

Sir Thomas Erskine May's Treatise on the Law, Privileges, Proceedings and the Usage of Parliament. Fifteenth Edition. Editor: LORD CAMPION, G.C.B., D.C.L., formerly Clerk of the House of Commons. Assistant Editor: T. G. B. COCKS, O.B.E., a Clerk in the House of Commons. 1950. pp. lvi and (with Index) 1057. London: Butterworth & Co. (Publishers), Ltd. 84s. net.

The National Health Service Act, 1946, Annotated. Supplement to the 1948 Edition. By S. R. SPELLER, LL.B., of Lincoln's Inn, Barrister-at-Law. 1951. pp. (with Index) xxxvi and 285. London: H. K. Lewis & Co., Ltd. 27s. 6d. net.

Ryde on Rating. Ninth Edition, with Supplement. By MICHAEL E. ROWE, K.C., M.A., LL.B., of Gray's Inn, Barrister-at-Law, HAROLD B. WILLIAMS, K.C., LL.D., of the Middle Temple, Barrister-at-Law, WILLIAM L. ROOTS, B.A., of the Middle Temple, Barrister-at-Law, and CLIVE G. TOTTENHAM, of Gray's Inn, Barrister-at-Law. 1950. pp. xcix, 1498 and (Index) 70. London: Butterworth & Co. (Publishers), Ltd. 90s. net.

Post Office, 1950. A Review of The Year's Activities. With a Foreword by the Postmaster-General, The Rt. Hon. NESS EDWARDS, M.P. 1950. pp. 92. London: H.M. Stationery Office. 2s. 6d. net.

Tolley's Synopsis of Estate Duty. Compiled by a Barrister-at-Law. Edited by KENNETH MINES, F.A.I.A., F.T.I.I., and L. E. FENNER, A.S.A.A., F.C.I.S. 1950. London: Waterlow and Sons, Ltd. (for Chas. H. Tolley & Co.). 4s. 6d. net.

The New Industrial Law. By W. F. FRANK, Dr. Jur., M.Sc. (Econ.), B.Econ., LL.B. 1950. pp. xix and (with Index) 456. London: The Thames Bank Publishing Co., Ltd. 35s. net.

The Board of Inland Revenue have appointed Mr. J. K. ATKINSON, F.R.I.C.S., to be Chief Valuer in succession to Sir Roydon Dash, D.F.C., F.R.I.C.S., F.A.I., who is retiring on 1st February, 1951.

Mr. T. J. MARRIOTT, of Northampton, has been appointed assistant solicitor to Hornchurch Urban District Council.

Mr. HENRY PATTEN, deputy Town Clerk of Bradford, was installed on 21st December, 1950, as president of the Bradford branch of the National Association of Local Government Officers.

Mr. J. H. WHITING has been re-elected chairman and Mr. W. MANSFIELD deputy chairman of the London Court of Arbitration.

NOTES OF CASES

HOUSE OF LORDS

DIVORCE: BIRTH AFTER 360 DAYS

Preston-Jones *v.* Preston-Jones

Lord Simonds, Lord Normand, Lord Oaksey, Lord Morton of Henryton and Lord MacDermott

14th December, 1950

Appeal from the Court of Appeal (93 SOL. J. 497 ; 65 T.L.R. 620).

The appellant husband and the respondent, his wife, were married on 14th April, 1941, when the husband was serving with the Royal Air Force. A son was born to the wife on 13th August, 1946. Nine months before that date, on 13th November, 1945, the husband was stationed in Germany. Royal Air Force records showed, the trial commissioner found, that he was not in the United Kingdom between 17th August, 1945, and 9th February, 1946, the date of his demobilisation, that was, between a date 360 days before the birth of the son and a date 186 days before that birth. No allegation of any kind was made as to the wife's conduct or disposition except the allegation of adultery, which the wife denied, based on the long period of gestation. The commissioner dismissed the petition. The Court of Appeal (Bucknill and Asquith, L.JJ. ; Denning, L.J., dissenting) allowed the husband's appeal, and ordered a new trial. Denning, L.J., was for granting the husband a decree *nisi* there and then. Bucknill, L.J., would have been for granting the husband a decree, but for the course which the commissioner had taken in relation to certain letters. Both parties now appealed to the House of Lords. The House took time for consideration.

LORD SIMONDS said that he did not think that the course taken by Bucknill, L.J., was justified by what had taken place with regard to the letters. The appeals raised this question of peculiar difficulty. If a husband proved that his wife had given birth to a normal child 360 days after he could have had intercourse with her, and no proof of any adulterous intercourse by her were given, what, if any, further evidence was required that the child was not his child? With regard to the standard of proof, the utmost that a court of law could demand was that it should be established beyond all reasonable doubt that a child conceived so many days after a particular coitus could not be the result of that coitus. It would appear a fantastic suggestion to any ordinary man or woman that a normal child born 360 days after the last intercourse of a man and a woman was the child of that man, and it was to him (his lordship) repugnant that a court of justice should be so little in accord with the common notions of mankind that it should require evidence to displace fantastic suggestions. But, as so often occurred in human affairs, the difficulty lay in drawing the line. He could not disregard the fact that in *Gaskill* v. *Gaskill* [1921] P. 425 Lord Birkenhead, L.C., held that in the existing state of medical knowledge a period of 331 days could not be regarded as impossible ; that in *Wood* v. *Wood* [1947] P. 103 ; 63 T.L.R. 450, a Divisional Court, in the absence of any medical evidence, came to the same conclusion with regard to a period of 346 days ; and that in *Hadlum* v. *Hadlum* [1949] P. 197 ; 92 SOL. J. 528, a period of no less than 349 days was not regarded as impossible. He must, he thought, however reluctantly, come to the conclusion that an additional period of eleven days, making 360 days in all, ought not to be regarded as making the vital difference so that the court could without any further evidence regard adulterous intercourse as proved beyond all reasonable doubt. He did not ignore that in *M.-T.* v. *M.-T.* [1949] P. 331; 93 SOL. J. 28, Ormerod, J., held that a lapse of 340 days between coitus and the birth of a normal healthy baby was impossible ; but the judge did so on the evidence of a distinguished specialist in that branch of medicine, who said that he had never heard of an authentic case of an interval of twenty-one days between coitus and fertilisation such as had been suggested as a possibility in *Gaskill's* case, *supra*, before modern methods of examination were available, or even of an interval of fourteen days which had been referred to in *Hadlum's* case, *supra*. Here the only medical evidence was that of one doctor. The question as he (Lord Simonds) saw it was whether the court ought to accept that evidence as adequate to justify a finding that beyond all reasonable doubt the child was not the child of the husband. He had no hesitation in answering the question in the affirmative. He did not say that the *onus probandi* shifted because the period was not a " normal " one, but he thought that the onus was a light one and was easily discharged when the period diverged largely from the normal. The court had the advantage of hearing a medical practitioner whose training and everyday working practice must have made him familiar with the ordinary problems of gestation and birth. He had, as he said, not studied the problem of the " maximum period from the time of sexual intercourse to the time of the impregnation of the ovum," but it was sufficiently clear from his earlier answers that, while recognising the possibility of some interval between coitus and fertilisation, he regarded as impossible an interval which would defer the birth of a normal child to 360 days after coitus. That he was, he (his lordship) thought, entitled to say, as a matter of competent medical opinion without having made a special study of the subject. In those circumstances the commissioner was not justified in disregarding his evidence. The commissioner was entitled as a matter of judicial knowledge to know that, just as there was a " normal " period of gestation, so there were " abnormal " cases ; but he was not entitled to set his own view of possible or probable abnormality, whether derived from the decided cases or from other sources, against the evidence which he heard. Having found the facts as stated, he should have acted on the medical evidence and granted the husband a decree. The appeal of the husband should be allowed, the cross-appeal of the wife dismissed, and the cause be remitted to the High Court in order that the proper decree might be made.

LORD NORMAND concurred.

LORD OAKSEY was in favour of dismissing the petition and allowing the cross-appeal. LORD MORTON OF HENRYTON and LORD MACDERMOTT concurred in allowing the husband's appeal and dismissing the wife's cross-appeal.

APPEARANCES: *Sir G. Russell Vick*, K.C., *W. L. Mars-Jones* and *M. B. Scholfield* (*Edward Mackie & Co.*) ; *Noel Middleton*, K.C., and *H. U. Brandon* (*Jaques & Co.*, for *Cyril Jones, Son and Williams*, Wrexham).

[Reported by R. C CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

INCREASE OF RENT TO MEET RISE IN RATES: STATUTORY TENANCY NOT CREATED

Mills *v.* Bryce

Somervell, Jenkins and Birkett, L.JJ.

4th December, 1950

Appeal from Judge Tylor, K.C., sitting at Southampton County Court.

The contractual tenant of a flat within the Rent Restriction Acts received due notice to quit, but died before its expiry. His daughter, the defendant, who lived with him in the flat until his death, claimed to be entitled to remain in occupation as a tenant under s. 12 (1) (*g*) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, which claim could only succeed if her father had at the date of his death been a statutory tenant (see *Thynne* v. *Salmon* (1947), 92 SOL. J. 83 ; 64 T.L.R. 63). The standard rent of the flat was £58 10s. a year. Under the tenancy in question the plaintiff landlord had paid the rates. When the sum which the landlord had to pay over for rates was deducted the sum left in his hands as rent was slightly less than the standard rent. During the tenancy there were three increases of rates and one decrease. With each increase the landlord demanded and received a corresponding increase of rent. When the rates were reduced he accepted a corresponding reduction. In effect, therefore, he received always only a rent slightly lower than the standard rent. In his action for possession the defendant contended that the making of those increases required the service of notice under s. 3 (2) of the Act of 1920, and that the result of them was accordingly to make the tenancy into a statutory tenancy. The county court judge so held and refused an order for possession. The landlord appealed.

SOMERVELL, L.J., said that the scheme of the Act of 1920 was, as appeared from s. 1, to make irrecoverable any rent in excess of the standard rent plus permitted increases. The increases made by the landlord from time to time here were made in respect of his own increased liability to rates, and they at no time brought the rent up to a figure exceeding the standard rent. In those circumstances no notices of increase of rent under

s. 3 (2) required to be served and the tenancy remained at all times a contractual one. Accordingly the defendant retained no right to remain in occupation after the death of her father, the contractual tenant, and the appeal must be allowed.

JENKINS and BIRKETT, L.JJ., agreed. Appeal allowed.

APPEARANCES: *Robert Hughes* and *David Stansfeld* (*Hallett, Martin & Lebern*, Southampton); *David McCarraher* (*Ewing, Hickman & Clark*, Southampton).

[Reported by R. C CALBURN, Esq., Barrister-at-Law.]

FURNISHED LETTING: TENANT'S PURCHASE OF FURNITURE

Stagg *v.* Brickett

Somervell, Denning and Birkett, L.JJ.

4th December, 1950

Appeal from Judge Leon, sitting at Wandsworth County Court.

The appellant landlord bought a house within the Rent Restriction Acts in October, 1940, and in December let it furnished at 25s. a week. That rent, being for a furnished letting, could not be taken as the standard rent (*Signy* v. *Abbey Building Society* [1944] K.B. 449). In 1941 the tenant bought the furniture. He paid a lump sum down and the balance at 5s. a week. The rent remained 25s. a week at first, but was then reduced because the tenant could not afford to pay 30s. a week. In June, 1941, the house became vacant and the landlord let it to the respondent at £3 10s. a week. He now instituted proceedings for determination of the standard rent, contending that the unfurnished letting to the former tenant in 1941 was the first letting after 1st September, 1939; and that the standard rent was accordingly the rent of that letting (s. 12 (1) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as amended by the Rent and Mortgage Interest (Restrictions) Act, 1939). The landlord contended that the letting to the respondent's predecessor must be entirely disregarded; that the first relevant letting after 1st September, 1939, was that to the respondent; and that the standard rent was accordingly £3 10s. a week. The county court judge upheld the tenant's contentions. The landlord appealed. (*Cur. adv. vult.*)

SOMERVELL, L.J., said that the effect of *Jozwiak* v. *Hierowski* (1948), 92 SOL. J. 361; 64 T.L.R. 322, the *obiter dictum* of Asquith, L.J., in *Welch* v. *Nagy* [1950] 1 K.B. 455, at pp. 461, 462; 94 SOL. J. 64, and *Seabrook* v. *Mervyn* [1947] 1 All E.R. 295, was that where premises were in the first place let furnished, variations in the furniture supplied or in the rent did not, in themselves, alter the character of the letting, which was *prima facie* determined for the period of the tenancy at the time when the original contract of tenancy was made. If, on the other hand, there were evidence of a variation consequent on the change in the position with regard to the furniture, the question of the rent, having regard to that change, being included in the negotiations, then regard must be had to the position at that date. In the present case neither the purchase by the earlier tenant of the furniture in itself nor anything that took place during the short period of the tenancy after the purchase precluded the application of the principle in *Jozwiak* v. *Hierowski, supra*, whereby the relevant date for determining the character of the tenancy was its inception. As the earlier tenancy accordingly remained at all times a furnished letting and was irrelevant to the question of standard rent, the first letting relevant to that question was the letting at £3 10s. a week to the respondent tenant. That figure accordingly represented the standard rent of the premises. The *obiter dictum* of Asquith, L.J., in *Welch* v. *Nagy, supra*, that "if during the currency of a single lease, which is originally a substantially furnished one, the tenant buys all the furniture, the effect is not, while that lease is still on foot, to convert the tenancy into an unfurnished one for the purpose of the Rent Restriction Acts" followed from the principle laid down in *Jozwiak* v. *Hierowski, supra*. It was a matter for future decision whether a tenant in the position of the earlier tenant here could, after purchasing the furniture, claim the protection of the Acts after determination of his tenancy by notice to quit; but, *semble*, he (Somervell, L.J.) did not see how he could. The appeal must be allowed.

DENNING, L.J., agreeing that the appeal succeeded, said that the rule that the position was to be regarded as at the inception of the tenancy was not absolute, for changes might occur which were not mere fluctuations, but so fundamental as to reverse the character of the letting. If a tenant bought all the landlord's furniture in the premises, the letting might well thereafter take on the character of an unfurnished letting and the tenant would then be protected. He (Denning, L.J.) could not go the whole way with Asquith, L.J., in his *obiter dictum* in *Welch* v. *Nagy, supra*, to the effect that the letting would not change its character in those circumstances. In the instant case the earlier tenant's purchase of the furniture did not have so fundamental an effect as to change the character of the letting, for that tenant remained in the premises only a short time after making the purchase, was still paying for it by weekly instalments when he left, and was paying the same weekly sum after as before the purchase.

BIRKETT, L.J., agreed. Appeal allowed.

APPEARANCES: *R. E. Megarry* (*Dixon, Ward & Co.*); *L. A. Blundell* (*Piesse & Sons*, for *Abbott, Sturgess & Co.*, Richmond, Surrey).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

FOOTBALL POOL COMPETITION: "TRANSACTION BINDING IN HONOUR ONLY"

Lee *v.* Sherman's Pools, Ltd.

Asquith and Jenkins, L.JJ. 8th December, 1950

Appeal from Parker, J., in chambers.

The plaintiff in his statement of claim alleged that on 14th April, 1950, by a contract between himself and the defendant company, football-pool promoters, they in consideration of his promise to remit to them the amount of his stake money, agreed with him that in the event of his correctly forecasting the result of seven football matches on a certain pool, which matches were played on 15th April, 1950, he would be paid by the company a share in the prize money of that pool. The plaintiff alleged that he had submitted a forecast of the seven results; that they were correct; that he thus became entitled to £1,270 13s. by way of prize money; but that the company in breach of their obligations refused to pay him that sum. Immediately above the plaintiff's signature on the coupon were the printed words: "I have read and agree to 'Sherman's Pools Rules, Issue No. 1 for Season 1949–50,' which govern this entry, and agree that this transaction is binding in honour only . . ." The relevant rule in the company's rules was an elaboration of that condition. Parker, J., affirmed the master's refusal of the defendants' application to have the statement of claim struck out as frivolous and vexatious. The defendants appealed.

ASQUITH, L.J., said that he regarded it as quite unarguable that a person who had signed the coupon in question was not bound by the condition there set out. All the materials necessary to trial of the action were thus before the Court of Appeal. He felt so little doubt that there was no arguable point for decision that he was of opinion that this was one of those unusual cases in which the statement of claim should be struck out, and the action dismissed *in limine*.

JENKINS, L.J., agreed.

APPEARANCES: *G. H. Beyfus*, K.C., and *C. L. Hawser* (*Harris, Chetham & Co.*, for *Rapport & Russell*, Cardiff); *C. H. Duveen* (*Isadore Goldman and Son*, for *R. G. H. Banbridge*, Manchester).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

The Lord Chancellor has appointed Mr. S. E. WILKINS, Registrar of the Aylesbury and Buckingham County Courts, to be in addition the Registrar of High Wycombe and Chesham County Courts as from 1st January, 1951, in place of Mr. J. C. Parker, who has resigned.

His Honour Judge RALPH THOMAS has been elected Treasurer of the Middle Temple for 1951 to succeed Sir Henry MacGeagh, K.C., the present Treasurer, who was Deputy Treasurer in 1949 during the Treasurership of Her Majesty the Queen.

The University of London announces a lecture on "The Study of Legal History" by C. H. S. Fifoot, M.A., Fellow of Hertford College, Oxford, at King's College, Strand, W.C.2, at 5.30 p.m., on Tuesday, 16th January, 1951. The chair will be taken by Professor H. Potter, LL.D., Ph.D., Professor of English Law in the University of London. Admission is free, without ticket.

The first designation order under the National Parks and Access to the Countryside Act, 1949, was made on 28th November, 1950. It relates to the Peak District National Park.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Recovery of Proportion of Death Duty—INTEREST

Q. An estate comprises English assets and an American mortgage. The executor has paid duty in England on the whole estate and is entitled to recover from the beneficiary to whom the American mortgage has been left the proportion of duty attributable to this asset. Is the beneficiary liable for interest on his proportion of the duty from the date of payment by the executor to the date of payment by the beneficiary? If so, at what rate and what is the authority?

A. There is no provision under which interest can be claimed in respect of the period from the date of payment by the executor to the date of payment by the beneficiary. If the beneficiary delays in payment the executor can, of course, take proceedings, in which case the court has power to allow interest, and interest will in any case run from the date of judgment. As to interest prior to payment by the executor, see s. 19 (1) of the Finance Act, 1896 (as amended).

Rescission of Contract after Estate Agent's Misstatement as to Building Society Advance

Q. A put his house in the hands of an estate agent (B) for sale who offered it to C for £1,875. C stated that he could not raise more than £450 and unless a mortgage was available for the balance the purchase was out of the question as he could not afford it. B assured C that he could obtain a building society mortgage for £1,425, and on that assurance C paid £100 as a deposit and completed a building society application form. At the request of B, C afterwards paid a further deposit of £200 to B. He also instructed his solicitors, who on receiving a contract from A's solicitors forwarded the document to him for signature. C called on B with the contract and stated that he would only sign it when he knew for certain that the building society would lend the money required. He left the contract with B. A few days later B sent his clerk to C with the contract for signature, stating that the building society were willing to lend £1,425. On this assurance, C signed the contract, which incorporated The Law Society's Conditions of Sale and the payment of the usual 10 per cent. deposit. The building society have now notified C that they will only lend £1,280. The explanation apparently is that the society's valuation is less than the purchase price. We shall be glad to know if you consider C is entitled to rescind the contract and claim repayment of the £187 10s. deposit specified in the contract and the further sum of £112 10s. in the hands of B?

A. Although it is stated in the enquiry that C signed the contract it is not stated that the part signed by him was exchanged through the solicitors for the part signed by A. If this has not been done we are of opinion that there is no contract and B is entitled to the return of all moneys paid: *Eccles* v. *Bryant* [1948] Ch. 93. If, however, exchange has taken place a contract has come into existence and C's consent has been induced by the fraud or mistake of B. Although B was probably not acting as A's agent in procuring the mortgage for C, B appears to have been A's agent and acting as such when he sent his clerk to C with the contract for signature and made the representation that the building society would advance £1,425. Assuming that B's statement as to the mortgage was wilfully false, B is guilty of the tort of deceit and C can recover from him any damage he may suffer as a result of entering into the contract with A. It is, however, possible that A may be unable to enforce the contract against C if B's action is adopted by A, which it must be if he seeks to enforce the contract. This latter consideration becomes of particular importance if B's misrepresentation was not fraudulent but merely mistaken (although how this could be the case is difficult to see), since only if B was acting as A's agent in making the representation as part of his general agency to find a purchaser would C be able to rescind the contract. It seems to us doubtful how far B's agency would be considered to continue after the matter has been transferred to the solicitors for preparation and exchange of contracts. We think it very unlikely, however, that B could prove his statement to be an "innocent" misrepresentation and even then it may be that the court will hold B to have been under a duty not to make even a negligent statement to C. For these reasons we incline to the view that C is entitled to rescind the contract and recover the deposit of £187 10s. and the further sum of £112 10s. in B's hands, but that he has an alternative remedy for deceit against B.

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Aberdeen and District Milk Marketing Scheme (Amendment) Order, 1950. (S.I. 1950 No. 2059.)

Agriculture (Calculation of Value for Compensation) Amendment Regulations, 1950. (S.I. 1950 No. 2029.)

Agriculture (Maximum Area of Pasture) (Extension) (Scotland) Order, 1950. (S.I. 1950 No. 2074.)

Agriculture (Special Directions) (Delegation to County Agricultural Executive Committees) Extension of Period Regulations, 1950. (S.I. 1950 No. 2030.)

Agriculture (Special Directions) (Maximum Area of Pasture) Extension of Period Order, 1950. (S.I. 1950 No. 2031.)

Airways Corporations (General Staff Pensions) Regulations, 1950. (S.I. 1950 No. 2056.)

Census Regulations, 1950. (S.I. 1950 No. 2028.)

Census (Scotland) Regulations, 1950. (S.I. 1950 No. 2034.)

Census of Distribution (1951) (Scope, Returns and Exempted Persons) Order, 1950. (S.I. 1950 No. 2036.)

Coal Industry Nationalisation (Valuation) (Amendment) (No. 2) Regulations, 1950. (S.I. 1950 No. 2068.)

Control of Rates of Hire of Plant Order, 1950. (S.I. 1950 No. 2060.)

Control of Wool (Fellmongering) (Revocation) Order, 1950. (S.I. 1950 No. 2069.)

Dredge Corn (Great Britain and Northern Ireland) (Amendment No. 3) Order, 1950. (S.I. 1950 No. 2049.)

Exchange Control (Authorised Depositaries) (Amendment) Order, 1950. (S.I. 1950 No. 2040.)

Export of Goods (Control) (Amendment No. 8) Order, 1950. (S.I. 1950 No. 2017.)

Foreign Compensation Commission Rules, Approval Instrument, 1950. (S.I. 1950 No. 2042.)

Furniture (Maximum Prices) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 2045.)

General Apparel (Distributors' Maximum Prices) (Amendment) Order, 1950. (S.I. 1950 No. 2033.)

Draft **House of Commons** (Redistribution of Seats) Order, 1951.

Draft House of Commons (Redistribution of Seats) (No. 2) Order, 1951.

Draft House of Commons (Redistribution of Seats) (No. 3) Order, 1951.

Draft House of Commons (Redistribution of Seats) (No. 4) Order, 1951.

Draft House of Commons (Redistribution of Seats) (No. 5) Order, 1951.

Draft House of Commons (Redistribution of Seats) (No. 6) Order, 1951.

Draft House of Commons (Redistribution of Seats) (No. 7) Order, 1951.

Draft House of Commons (Redistribution of Seats) (No. 8) Order, 1951.

Import Duties (Drawback) (No. 12) Order, 1950. (S.I. 1950 No. 2027.)

Import Duties (Drawback) (No. 13) Order, 1950. (S.I. 1950 No. 2062.)

Import Duties (Exemptions) (No. 11) Order, 1950. (S.I. 1950 No. 2026.)

Isle of Wight Water Board Order, 1950. (S.I. 1950 No. 2009.)

Lace Finishing Wages Council (Great Britain) (Constitution) Order, 1950. (S.I. 1950 No. 2076.)

Linoleum and Printed Felt Base (Maximum Prices and Charges) (Amendment) Order, 1950. (S.I. 1950 No. 2023.)

London Traffic (Prescribed Routes) (No. 21) Regulations, 1950. (S.I. 1950 No. 2052.)

Maintenance Orders Act, 1950 (Summary Jurisdiction) Rules, 1950. (S.I. 1950 No. 2035 (L. 30).)
Midwives (Amendment) Rules, Approval Instrument, 1950. (S.I. 1950 No. 2011.)
North of Scotland Milk Marketing Scheme (Amendment) Order, 1950. (S.I. 1950 No. 2058.)
Oats (Great Britain and Northern Ireland) (Amendment) Order, 1950. (S.I. 1950 No. 2050.)
Patents (Extension of Time) (Israel) Rules, 1950. (S.I. 1950 No. 2024.)
Police (Consolidation) (No. 2) Regulations, 1950. (S.I. 1950 No. 2020.)
Police (Women) (Consolidation) (No. 2) Regulations, 1950. (S.I. 1950 No. 2021.)
Railway Freight Rebates Regulations, 1950. (S.I. 1950 No. 2078.)
Registered Designs (Extension of Time) (Israel) Rules, 1950. (S.I. 1950 No. 2025.)
Road Vehicles (Registration and Licensing) (Amendment) Regulations, 1950. (S.I. 1950 No. 2063.)
Scottish Milk Marketing Scheme (Amendment) Order, 1950. (S.I. 1950 No. 2057.)
Shepton Mallet Water Order, 1950. (S.I. 1950 No. 2075.)
Stopping up of Highways (Buckinghamshire) (No. 1) Order, 1950. (S.I. 1950 No. 2051.)
Stopping up of Highways (Devonshire) (No. 7) Order, 1950. (S.I. 1950 No. 2065.)
Stopping up of Highways (Kent) (No. 7) Order, 1950. (S.I. 1950 No. 2037.)
Stopping up of Highways (Middlesex) (No. 5) Order, 1950. (S.I. 1950 No. 2067.)
Stopping up of Highways (Northumberland) (No. 1) Order, 1950. (S.I. 1950 No. 2066.)
Tin Box Wages Council (Great Britain) Wages Regulation Order, 1950. (S.I. 1950 No. 2073.)
Trent River Board Constitution Order, 1950. (S.I. 1950 No. 2041.)
Utility Apparel (Maximum Prices and Charges) Order, 1949 (Amendment No. 16) Order, 1950. (S.I. 1950 No. 1996.)
Utility Cloth and Utility Household Textiles (Maximum Prices) (Amendment No. 13) Order, 1950. (S.I. 1950 No. 1981.)
Utility Furniture (Marking and Supply) (No. 2) Order, 1950. (S.I. 1950 No. 2046.)
Wages Regulation (Licensed Residential Establishment and Licensed Establishment) (Amendment) Order, 1950. (S.I. 1950 No. 2077.)
Wheat (Great Britain and Northern Ireland) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 2048.)
Wool (Fellmongering) Order, 1950. (S.I. 1950 No. 2070.)

NOTES AND NEWS

Honours and Appointments

Sir ALFRED BUCKNILL has been elected Treasurer of the Inner Temple for 1951 and Lord Justice SINGLETON Reader for the Lent Vacation.

Miscellaneous

Messrs. Jones, Lang, Wootton & Sons, auctioneers, surveyors and valuers, announce that as from April next Mr. F. C. Palmer, F.R.I.C.S., will be retained by them as rating consultant.

At The Law Society's Final Examination held on 6th, 7th and 8th November, 1950, 239 candidates out of 441 were successful. The John Mackrell Prize has been awarded to Mr. R. O. Hibbert.

TRANSPORT ARBITRATION TRIBUNAL

PRACTICE NOTE

The following practice note has been issued by the Tribunal:

During an adjourned hearing before the President (C. Montgomery White, Esq., K.C.) on 7th December, 1950, of an application for further and better particulars of an amended statement of facts and contentions of the applicant for compensation under s. 47 (3) of the Transport Act, 1947 (a transferor company of a road haulage undertaking compulsorily acquired by the British Transport Commission under the Act of 1947), the President stated that the Tribunal would be prepared to order:—

(i) Particulars of any sum alleged to be the average net annual profit of the applicant, viz.—

(*a*) the amount of the profit or loss appearing from the audited accounts of the applicant to have been made in the carrying on of the acquired undertaking in each of the last three financial years as defined in Sched. IX to the Transport Act, 1947;

(*b*) as regards each of such years, what deductions (if any) have been made in such accounts in respect of wear and tear and replacement of property held for the purposes of such undertaking;

(*c*) what adjustment (if any) it is contended or conceded by the applicant ought to be made in the amount of the profit or loss appearing in such audited accounts and any facts relied upon by the applicant as establishing that any such adjustment ought to be made.

(ii) Particulars of any facts relied upon by the applicant in support of its contention that the number by which its average net annual profit ought to be multiplied is five, other than such as may appear from a perusal of its audited accounts or from the facts pleaded in its statement of facts and contentions or from the particulars of its average net annual profits delivered under para. (i) above.

THE SOLICITORS ACTS, 1932 TO 1941

On the 19th day of December, 1950, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of WILLIAM MEIRION WILLIAMS, formerly of No. 42 Hargrave Park, Upper Holloway, London, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and enquiry.

On the 19th day of December, 1950, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon CUTHBERT RUDYARD HALSALL, of No. 18 Hoghton Street, Southport, in the County of Lancaster, a penalty of £350 to be forfeit to His Majesty, and that he do pay to the complainant his costs of and incidental to the application and enquiry.

Wills and Bequests

Sir William Bird, solicitor, of Gray's Inn, left £330,379.

Mr. A. V. Prior, solicitor, of Abingdon Street, S.W.1, left £36,394 (£36,338 net).

OBITUARY

MR. W. ADAMS

Mr. William Adams, Town Clerk of Saffron Walden from 1895 to 1935, died on 31st December, 1950, aged 86. Admitted in 1887, he was clerk to the borough magistrates, a Freeman of the borough and Deputy Lieutenant of Essex.

MR. D. AUKLAND

Mr. Dudley Aukland, Clerk of the Peace and of the County Council of Surrey, died on 23rd December, 1950. He was admitted in 1909.

MR. E. E. PAIN

Mr. Ernest Edward Pain, retired solicitor, of Dover, died on 19th December, 1950. He was admitted in 1886.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 88–90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: Inland £3, Overseas £3 10s. (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

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